

SENATE BILL NO. 615

BY SENATOR APPEL

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AN ACT

To amend and reenact R.S. 33:9613(A)(3) and 9614(B) and (C), to enact R.S. 33:9613(A)(4) and 9614(D) and (E), relative to local ethics entities, including but not limited to an ethics review board or office of inspector general in the parishes of East Baton Rouge, Jefferson, and Orleans; to provide relative to subpoena powers; to provide for protective orders; to provide relative to enforcement of subpoenas; to provide relative to the privileged nature of certain documents; to provide relative to public access to public documents; and to provide for related matters.

Notice of intention to introduce this Act has been published.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:9613(A)(3) and 9614(B) and (C) are hereby amended and reenacted and R.S. 33:9613(A)(4) and 9614(D) and (E) are hereby enacted to read as follows:

§9613. Investigative powers

A.(1) \* \* \*

(3) In the performance of its duties, a local ethics entity, ethics review board, or office of the inspector general may compel the attendance of witnesses to be deposed under oath or the production of public and private records by issuing a subpoena. ~~However~~ **Except as provided in Paragraph (4) of this Subsection**, such a subpoena or subpoena duces tecum shall be issued only upon approval of a judge of the district court of the parish in which a local ethics entity, ethics review board,

1 or office of inspector general is domiciled upon application in writing by such entity,  
2 board, or office. The judge shall issue a written decision within seventy-two hours  
3 after receipt of such application. Any subpoena for production of private records  
4 shall be in compliance with all applicable constitutionally established rights and  
5 processes. Any request for financial records in the possession or under the control  
6 of a bank pursuant to this Chapter is subject to and shall comply with the  
7 requirements and procedures of R.S. 6:333. The subpoena may be served by certified  
8 mail, return receipt requested, at the addressee's residence or business address, or by  
9 representatives appointed by the local ethics entity, ethics review board, or office of  
10 inspector general, or may be directed for service to the office of the municipal police.  
11 If a person refuses to obey a subpoena issued by the local ethics entity, ethics review  
12 board, or office of inspector general, the district court of the parish in which the local  
13 ethics entity, ethics review board, or office of inspector general is domiciled may  
14 issue an order to the person requiring the person to appear before the court to show  
15 cause why an order shall not be issued ordering such person to obey the subpoena.

16 **(4)(a) In the performance of its duties, a local office of inspector general**  
17 **in the city of New Orleans or parish of Jefferson may issue an administrative**  
18 **subpoena duces tecum to require the production of books, records, documents,**  
19 **or other evidence deemed relevant or material to an investigation, audit, or**  
20 **inspection. The subpoena duces tecum shall be issued only in furtherance of the**  
21 **authority provided by local ordinance and by Subsections D and E of this**  
22 **Section and shall comply with all applicable constitutionally established rights**  
23 **and processes.**

24 **(b) The subpoena duces tecum may be served by certified mail, return**  
25 **receipt requested, at the addressee's residence or business address.**

26 **(c) The entity receiving the subpoena duces tecum may file a motion with**  
27 **the district court of the parish in which the office of inspector general is**  
28 **domiciled to amend or quash the subpoena. The motion shall be filed any time**  
29 **before the date for attendance or compulsion specified in the subpoena or**  
30 **within twenty days after the subpoena duces tecum has been served, whichever**

1 is earlier. In no event shall any penalty attach to the recipient of such an  
2 administrative subpoena duces tecum for failure to respond without an order  
3 from the district court of the parish in which the office of inspector general is  
4 domiciled.

5 (d) If the subpoena duces tecum is not quashed and is not complied with  
6 by the date for production of documents, the office of the inspector general may  
7 apply to the district court of the parish in which the office of inspector general  
8 is domiciled for an order compelling compliance with the subpoena. Any person  
9 failing to comply with the order compelling compliance shall be adjudged in  
10 contempt of court.

11 \* \* \*

12 §9614. Confidentiality of ~~preliminary investigations~~ certain records

13 \* \* \*

14 B. Any material, records, data, and information compiled by an office of  
15 inspector general in an investigation, examination, audit, inspection, or performance  
16 review under this Chapter is confidential and **privileged and** not subject to R.S. 44:1  
17 et seq., until the investigation, examination, audit, inspection, or performance review  
18 is complete. The investigation, examination, audit, inspection, or performance review  
19 is not deemed complete if the office of inspector general has submitted material,  
20 records, data, and information from or the results of such investigation, examination,  
21 audit, inspection, or performance review to any other law enforcement or regulatory  
22 agency for further investigation or for the filing of criminal or civil prosecution, and  
23 if such investigation or prosecution has not been completed or become inactive.

24 C. Except for the completed reports, findings, advisories, letters, and  
25 recommendations of investigations, audits, inspections, performance reviews,  
26 qualitative assurance reviews, peer reviews, annual operating budgets, and annual  
27 office reports, the records prepared or obtained by the ethics entity, ethics review  
28 board, or office of inspector general shall be deemed confidential **and privileged** and  
29 protected from disclosure pursuant to R.S. 44:3. In order to maintain the  
30 confidentiality of such materials, the ethics entity, ethics review board, or office of

1 inspector general may meet and make decisions in executive session. No privilege  
 2 established by law shall be deemed waived on any record obtained by the ethics  
 3 entity, ethics review board, or office of inspector general in connection with the  
 4 performance of duties established by this Chapter. Any record or information  
 5 obtained by the ethics entity, ethics review board, or office of inspector general  
 6 which is confidential **or privileged** pursuant to any other provision of law shall  
 7 remain confidential **or privileged**, and it shall be a misdemeanor punishable by a  
 8 fine of not more than two thousand dollars or imprisonment for not more than one  
 9 year, or both, for the ethics entity, ethics review board, or office of inspector general  
 10 or any designated staff member or any other public official, corporation, or  
 11 individual to make public any such information or record.

12 **D. The provisions of this Section shall not prevent access during the**  
 13 **course of an inspector general investigation to public records that are not**  
 14 **otherwise privileged or confidential. The custodian of any public record shall**  
 15 **provide such record to any person having the right to examine public records.**  
 16 **If the only copy of such public record is in the hands of the inspector general,**  
 17 **the custodian of that record shall so certify, and the requestor may examine and**  
 18 **copy the record at the office of the inspector general.**

19 **E. Notwithstanding Subsections B and C of this Section, the legislative**  
 20 **auditor shall have the authority to examine, audit, inspect or copy all records**  
 21 **compiled, prepared or obtained by the ethics entity, ethics review board or**  
 22 **office of inspector general, including but not limited to all books, accounts,**  
 23 **papers, documents, records, files, instruments, films, tapes, and any other forms**  
 24 **of recordation, including but not limited to computers and recording devices,**  
 25 **whether confidential, privileged or otherwise. However, the legislative auditor**  
 26 **shall comply with all restrictions imposed by law on documents, data, or**  
 27 **information deemed confidential and privileged by law and furnished to the**  
 28 **legislative auditor.**

29 Section 2. This Act shall become effective upon signature by the governor or, if not  
 30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_